

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION (FOR DIRECTION) NO. 10 of 2023
 In R/WRIT PETITION (PIL) NO. 133 of 2021

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 11 of 2023
 In R/WRIT PETITION (PIL) NO. 133 of 2021

With

CIVIL APPLICATION (FOR ORDERS) NO. 12 of 2023
 In R/WRIT PETITION (PIL) NO. 133 of 2021

With

CIVIL APPLICATION (FOR ORDERS) NO. 13 of 2023
 In R/WRIT PETITION (PIL) NO. 133 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA
 and
 HONOURABLE MR. JUSTICE NIRAL R. MEHTA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PATEL DHARMESHBHAI NARANBHAI

Versus

DHARMENDRABHAI PRAVINBHAI FOFANI

Appearance:

MR PERCY KAVINA, SR. ADVOCATE, with MR EJAZ M QURESHI(5401) for the PETITIONER(s) No. MS MANISHA L SHAH, GOVERNMENT PLEADER assisted by MR CHINTAN DAVE, AGP for the RESPONDENT(s) No.

MR HASHIM QURESHI(1097) for the RESPONDENT(s) No.
MR. KM ANTANI(6547) for the RESPONDENT(s) No.
MR ASIM PANDYA, SR. ADVOCATE with MR.JAY S SHAH(7244) for
the RESPONDENT(s) No.
RIZVAN SHAIKH(7146) for the RESPONDENT(s) No.
=====

CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 11/04/2023

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

The issue arising in the present proceedings is about achieving an equilibrium between the right of meat vendors to do business on one hand, and the concerns for food safety and public health, on the other. May be, it is also a friendly duel between one's right to food and the right to have safe food.

1.1 Heard learned senior advocate Mr. Percy Kavina with learned advocate Mr. Ejaz Kureshi, learned advocate, Mr. MTM Hakim with learned advocate Mr. Rizvan Shaikh for the applicants in the respective Civil Applications and learned learned Government Pleader Ms. Manisha Lavkumar assisted by learned Assistant Government Pleader Mr. Chintan Dave for the respondent State and the authorities of the State and learned senior advocate Mr. Asim Pandya with learned advocate Mr. Jay Shah, learned advocate Mr. Hasim Kureshi and learned advocate Mr. Jay Thakkar for respective private respondents in all the Civil

Applications, at length.

2. The submissions on behalf of the respective parties in course of the hearing remained confined to and focused on the prayers in the captioned Civil Applications. The twenty-one applicants of Civil Application No. 10 of 2023 have prayed for passing an order to open the seal of chicken meat shops in the city of Surat.

2.1 The applicant of Civil Application No. 12 of 2023-original respondent no. 44, and of Civil Application No. 13 of 2023-original respondent no.43, both have sought for similar directions for re-opening the premises or shops or slaughter houses of the members of the applicant association engaged in the slaughtering of small animals such as goats and sheep and further to permit to sell the mutton.

2.2 It is next prayed to direct the respondents to implement the order and directions of the Hon'ble Supreme Court issued in Writ Petition (Civil) No. 309 of 2003 applying the statutory provisions pragmatically, simultaneously permitting the members of the applicant to continue their business of selling the meat.

2.3 Applicants 1 to 12 of Civil Application No.11 of 2023 seek to join as party respondents in the Writ Petition(PIL) No. 133 of 2021.

3. In order to comprehend the controversy and

consider the grantability or otherwise of the prayers in the Civil Applications, it is necessary to have brief visit to the subject-matter and issues involved in the parent public interest petition.

3.1 Writ Petition (PIL) No. 133 of 2021 pending before this Court came to be filed for seeking implementation of the guidelines issued by the Supreme Court in Writ Petition (Civil) No. 309 of 2003 with Writ Petition (Civil) No. 330 of 2001 and other allied petitions, which related to illegal slaughter houses, their impact on the animals, public health and environment and for enforcement of various laws including food safety and standards laws, closure of illegal slaughter houses operating in contravention of the statutory provisions, the animal transport norms and for formation of State Level Committees to oversee the implementation of these and related laws.

3.1.1 In the said Public Interest Petition before this Court, the following have been prayed for,

(i) to direct the authorities to implement the guidelines issued by the Supreme Court and the Ministry of Environment and Forest in course of hearing of Writ Petition (C) 330 of 2001.

(ii) to direct the authorities to implement Transport Animal Rules, the

relevant provisions of the Central Motor Vehicle Rules as well as the Bombay Animal Preservation (Gujarat) Rules, 1967.

(iii) to direct for implementation of slaughter house wastage and its disposal management under Environment Laws and the Municipal Solid Waste (Management and Handling) Rules, 2000.

(iv) to take steps for closure of illegal slaughter houses in the State of Gujarat not possessing the license under the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 and under other various laws.

(v) to direct closure of slaughter houses and meat shops, outlets and hotels operating in violation of the provisions of Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 and Food Safety Standard Act.

(vi) to direct the authorities to follow strictly the provisions of Gujarat Municipality Act and Gujarat Panchayats Act regarding opening of the meat shops, for wastage disposal and for maintaining hygiene standards.

(vii) to take necessary action against the erring slaughter houses, meat shops, hotels and poultry farms under the Environment Protection Laws, Animal Cruelty Laws and under the provisions of the Indian Penal Code.

3.1.2 The public interest petitioner prayed for direction against the Registrar of this Court to appoint retired District Judge as convener of the State Committee on Slaughter Houses constituted by the Supreme Court in Writ Petition (C) No. 330 of 2001 and allied matters. It is further prayed to form District Committee under the chairmanship of District Collector concerned as per the Resolution passed by the State Committee on slaughter house dated 06.01.2014. The Direction was also sought for to appoint two prominent persons in the State Level Committee for slaughter house.

3.1.3 Succinctly stated, the public interest petitioner has contended that directions and guidelines of the Supreme Court in relation to slaughter of animals, cruelty to them, etc. have not been obeyed and the requisite no objection certifications from the Gujarat Pollution Control Board required under the environmental laws as well as the clearances from the statutory bodies and the local-self governments are not obtained. Large number of meat shop and slaughter houses in the

entire State are operated in violation of the relevant laws and the statutory prescriptions including in contravention of the Food Safety Standard Laws and Regulations, it has been contended.

3.2 Before the Apex Court, in the Public Interest Litigation being Writ Petition (C) 330 of 2001 and others, it was prayed for directions against the State Governments, Ministry of Environment and Forest, Union of India, Animal Welfare Board of India and other statutory authorities to effectively implement the provisions of the Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000 and also the provisions of Environment Protection Act, 1986, Schedule - I, Entry 50 as well as the Solid Waste (Management) Rules, 2000, etc. The Public Interest Petitioners wanted implementation of other laws relating to animal transportation, animal cruelty and for recognising the slaughter houses operating in conformity with applicable statutes. The petitioners prayed for enforcement of regulatory measures, food safety norms.

3.2.1 In the various orders passed in the public interest litigation dated 23.08.2012, 10.10.2012 and 17.08.2013, 01.10.2014, the Supreme Court issued directions to Central Pollution Control Board to initiate action against all slaughter houses which are not meeting with the norms and complying with the

abattoir rules. The Supreme Court monitored the issues by directing of holding of meeting by the authorities concerned. The States were requested to constitute State Committee for slaughterhouses, specifying the members of the committee and functions to be discharged. By order dated 30.01.2014, the Chief Justices of the various High Courts in the country were requested by the Supreme Court to nominate name of a retired District Judge to serve as convener of the committee for two years and to send the quarterly reports.

3.2.2 In order dated 22.08.2016, the Supreme Court noted that the Central Pollution Control Board had invited comments from the Slaughter House, Meat and Sea Food Effluent Industry, Effluent Discharge Standard and that the final notification was awaited. This order is not burdened with repeating all those details.

3.2.3 Finally on 17.02.2017, Writ Petition (C) No. 330 of 2001 and other connected petitions came to be disposed of, observing,

"Pursuant to our orders dated 26.09.2016 and 28.10.2016, a compendium of the Indian Standards has been prepared along with all relevant material in consultation with all the stake-holders.

The Union of India is directed to print the compendium in sufficient numbers and circulate it to all the State Governments and Union Territories for compliance. The Union of India will comply with our orders within six weeks from today.

In the event there is non-compliance with the Indian Standards, other rules and regulations, the petitioners are entitled to approach the concerned District Collector or the judicial authorities, as the case may be in a given specific instance."

3.3 It was in light of the observations and directions by the Supreme Court in the aforementioned public interest litigation, that the present Writ Petition (PIL) before this court was filed by the petitioner claiming to be a public spirited advocate to submit inter alia that letters and representations were addressed to the authorities in different districts calling upon them to take steps against the illegally run slaughter houses and to take action against the meat vendors running their business without a license.

3.3.1 The petitioner complained lethargy in implementing the directions and enforcing the provisions of the relevant clauses pertaining to welfare of the animals and food safety standards. Orders were passed time to time in the main public interest petition.

3.4 On 06.09.2022, the Court called upon the State to indicate on the following aspects by filing affidavit,

"(i) As to whether two (2) prominent persons have been nominated to the State Slaughter House Committee? and if so, their names and

addresses;

(ii) As to how many meetings having been held by the State Slaughter House Committee and the original book of the minutes drawn at the meeting held by the Slaughter House Committee shall be placed on record along with affidavit;

(iii) Orders relating to the constitution of the District Level Slaughter House Committee and details pertaining to said Committee shall also be placed on record;

(iv) The basis on which persons holding the license under the Food Safety and Standards Rules, 2011 being permitted to slaughter the animals in the so called licensed premises, shall also be placed;"

3.4.1 On 18.10.2022 thereafter, the Court noted in its order that two prominent persons were appointed to the State Slaughter House Committee. However, the Court was not satisfied about the frequency of the meetings held by the Committee to observe that the State Authorities were shedding crocodile tears and that they were ineffective in implementing the orders of the Supreme Court.

3.4.2 This Court in the aforementioned order dated 18.10.2022 stated further,

"The functions of the State Committee for Slaughter Houses which came to be delineated by the Hon'ble Apex Court in the above mentioned matter amongst others included that such Committee is required to send biannual reports of such Committees to the Central Committee and such Committee was required to carry out surprise and random inspections of Slaughter Houses regularly and to issue directions for compliance of its recommendations and also

recommend to the appropriate Government the measures for dealing with solid waste, water / air pollution and for preventing cruelty to the animals meant for slaughter, recommending modernization of Slaughter Houses; to call for reports from the District Magistrate or the Deputy Commissioner and District Food Safety Inspector, as the case may be, on compliance of the relevant applicable laws; to identify and prepare a list of Slaughter Houses located within the local self Government, Municipal Corporation, Panchayats etc. This effective implementation of the functions of the State committee can only be done if there is constant meeting wherein deliberations would take place on account of the meeting of minds. The affidavit filed by the Deputy Director of Animal Husbandry would indicate that steps taken are not in consonance with observation made by Hon'ble Apex Court. In the affidavit filed by the Joint Commissioner, Food and Drugs Control Administration, the deponent has referred to Annexure-R3 to contend that an extensive search and scrutiny was undertaken by the answering respondent taking under its sweep most of the licensed or registered meat shops across the State of Gujarat and particularly of the Districts specified in the representation of the petitioner and an inspection report is annexed i.e. Annexure-R3."

3.4.3 The Court further said,

"Perusal of the same would indicate that in many places the meat shops have not been even issued with a license by the local Panchayat or Municipal Corporations. For instance in Palanpur circle the shops indicated in Annexure-R3 at serial Nos.344 to 351, are not licensed or, in other words, no registration has been done. The authorities have also found that poultry slaughtering is being carried on in these shops. By issuing a notice, they claim to have taken steps. It is also pertinent to notice that shops found at serial Nos. 367 to 371 are not registered. Yet no steps have been taken to close down those shops on the ground that there is no slaughtering of the animals. However, the larger issue which required to be examined by the authorities is whether such shops would be in a

position to sell the unstamped meat or chicken."

3.4.4 This Court also noticed Section 207 and 208 of the Gujarat Municipalities Act, 1963, to observe that the provisions required that the slaughter house should not be at a place other than municipal market. It was observed that in the city of Palanpur, though the meat shops were not registered, notices were not issued to them; there were some shops, it was stated that though the notice was served upon them, but closure had not taken place.

3.4.5 The Court then pertinently observed that such non-compliance would adversely affect the private and public health,

"This unhygienic sale of unstamped meat would adversely affect the health of the persons who would be consuming such meat or chicken or fish, as the case may be. It is high-time that the authorities wake-up from their slumber and effectively implement the provisions of the Act in larger interest of public."

3.4.6 On the aforesaid ground, the Court directed the filing of report by the District Legal Service Authority giving the details whether any unstamped meat was sold or slaughtering of animals were resorted to without complying with the norms thereof and other such details, in respect of all the districts.

3.4.7 In Paragraph 10 of the order, affidavit-in-

reply of Joint Commissioner, Food and Drugs Control Administration was referred to and it was noted,

"....currently there are 8 Slaughter Houses as per Annexure-R2. A perusal of the said document reveals only 4 Slaughter Houses are procuring license and remaining 4 at Serial Nos. 5 to 8 located in the jurisdiction of Vadodara Municipal Corporation, Rajkot Municipal Corporation, Jamnagar Municipal Corporation and Junagadh Municipal Corporation do not possess any license. In fact the Slaughter House at serial No.8 has been sealed by the Gujarat Pollution Control Board in the year 2010 itself. However, the Slaughter Houses at serial Nos. 5, 6 and 7 are said to be working and it is stated by the deponent that process for obtaining the license is underway. This again is a mirror to the fact, that orders of the Hon'ble Apex Court is not being complied effectively. Though we are prima facie satisfied that orders of the Hon'ble Apex Court is not fully complied, we desist from passing any orders in that regard for the simple reason that reports have been called for through the District and Taluka Legal Services Authorities and on such reports being placed on record further orders would be passed by this Court. Aforesaid affidavit would also disclose that extensive scrutiny was undertaken by the answering respondent and the inspection report is produced at Annexure-R3 (which is already partly referred to hereinabove)."

3.4.8 It was observed expressing dissatisfaction,

"The authorities after having found that several shops not possessing license and yet are indulging in sale of meat, chicken etc., and instead of taking stringent action, authorities seems to have extended an olive branch by issuance of notice and calling upon them to be complete compliance with the provisions of the Food Safety and Standards Act, 2006 and the Rules made thereunder. This Court is not only perplexed but also finds the manner in which this aspect has been dealt by the State authorities in not taking the stringent action

against such erring business places or premises which are being brazenly run without there being license either issued under the Food Safety Act or under the Municipalities Act or Municipal Corporations Act. In fact the deponent clearly admits in paragraph 8 of the affidavit that approximately 344 "petty food businesses", have indulged in slaughtering of animals in violation of the provisions of Regulation 2011 and as such closure notice has been issued on 20.09.2022. As to whether proceedings so initiated has been taken to its logical end will only have to be answered by the very deponent by the next date of hearing by placing material on record."

3.4.9 The order dated 18.10.2022 was concluded with following directions in paragraph 11. It is pursuant to these directions that the unstamped meat shops and premises selling or slaughtering it without license were subjected to action of closure by the authorities on the ground that they operated non-compliant of provisions of various laws.

"We do hope and trust that Commissionerate, Food and Drug, Gujarat State would take all such reasonable steps by instructing the Food Safety Officers / Designated Officers to forthwith take steps for closure of the shops or premises where the unstamped meat is being sold or slaughtering of animals being carried out without any license and initiate appropriate criminal prosecution or civil prosecution as the case may be as required under Section 42 of the Food Safety and Standards Act, 2006."

3.5 In response to the various orders including the aforesaid order dated 18.10.2022, the competent authorities have filed their affidavits in reply. In the affidavit dated 28.03.2023, filed by the Deputy

Director of Animal Husbandry, on behalf of respondents no. 2 and 3, it was inter alia stated that, as per the directions of the Supreme Court, the State Level Slaughter House Committees was already constituted by Resolution dated 23.10.2012 and that now by resolution dated 20.09.2022, two prominent persons with experience in the field of Law and Justice and Animal Welfare activity have also been appointed. It was stated that the State Level Slaughter House Committee had been convening meetings at regular intervals across the State. It was pointed out that sub-committees at district level have also been constituted, giving the details of members etc.

3.6 The Gujarat Pollution Control Board-Respondent no.4, in its affidavit inter alia mentioned that considering the pollution index based on emissions, which are air pollutants, and effluents which are water pollutants and hazardous waste generated, the units in the industrial sector are classified as White Category with pollution index score upto 20, as Green Category having pollution index of 21-40, as Orange Category and Red Category respectively whose pollution index score is 41-59 and above 60. It was stated that the industries falling under White Category are not required to get "consent to operate" and intimation to the Pollution Control Board would be sufficient.

3.6.1 About the units which are slaughtering houses of animals, it was stated that they are also classified into White, Green and Red Categories. It was stated that most of the retail meat shops and petty slaughtering houses would fall in White Category. The Pollution Control Board has stated that the requirements to be complied with for White Category units are less stricter and that if the application and undertaking is given in the prescribed form, the competent authority would grant registration to such units in the prescribed form.

3.7 On behalf of respondent no.5, the State Designated Officer, Food and Drug Control Administration filed his reply to inter alia place before the Court the details of the steps taken pursuant to the orders of the Court in which the State Legal Services Authority was directed to carry out the survey. It was stated that a 1000-pages report came to be submitted by the State Legal Services Authority. Summary of the report is placed along with the affidavit-in-reply. It gives district-wise details about the number of shops and slaughter houses with license and without license, those selling stamped meat and selling un-stamped meat, those found with hygienic condition and without hygienic condition.

3.7.1 The Food & Drugs Control Administration, Gandhinagar has given the information in relation to

each district about the slaughter house, meat processing unit, those are licesned and un-licensed as on 13.02.2023. The figures are indicative that there are 2621 slaughter houses, meat processing units and meat shops, licensed and registered across the State. Out of them, 940 have been sealed by the Municipal Corporations or the Municipalities concerned.

3.8 Noticing the details in respect of major districts from the action taken report of the District Level Slaughter House Sub-Committee,

(i) Ahmedabad Municipal Corporation : (a) 312 shops were visited in the Corporation area. 283 shops had licenses whereas 29 were without liceces. 15 of them have been sealed by the authorities. (b) Number of shops selling stamped meat were 210, unstamped meat 102, out of which 58 were sealed. (c) Number of shops found with hygienic conditions were 233, number of shops with unhygienic condition found were 79, of which 14 have been sealed.

(ii) Surat Municipal Corporation : (a) 769 shops were visited in the Corporation area. 192 shops had licences whereas 297 were without licences. 297 of them have been sealed by the authorities. (b) Number of shops selling stamped meat were 192, unstamped meat 577, out of which 416 were sealed and 15 were demolished. (c) Number of shops found with hygienic

conditions were 674, number of shops with unhygienic condition found were 95, of which 95 have been sealed.

(iii) Vadodara Municipal Corporation : (a) 99 shops were visited in the Vadodara Corporation area. 64 shops had licences whereas 35 were without licences. 35 of them have been sealed by the authorities. (b) Number of shops selling stamped meat were 16, unstamped meat 18, out of which 18 were sealed. (c) Number of shops found with hygienic conditions were 13, number of shops with unhygienic condition were 46, of which 40 have been sealed and 6 have been closed.

(iv) Rajkot Municipal Corporation : (a) 61 shops were visited in the Rajkot Corporation area. 1 shops had licence whereas 60 were without licences. 15 of them have been sealed by the authorities and 1 shop was closed. (b) Number of shops selling stamped meat were 1, unstamped meat 59, out of which 15 were sealed and 1 shop was closed. (c) Number of shops found with hygienic conditions was 1, with unhygienic condition found were 59, of which 15 have been sealed and 1 shop has been closed.

3.9 On behalf of respondent No.3- the Director of Animal Husbandry and Member Secretary, State Slaughter House Committee, Gandhinagar, detail affidavit-in-reply dated 8.2.2023, came to be filed

in which by giving details facts and figure it was explained and clarified as to why all unlicensed shops selling unstamped meat and selling meat in unhygienic conditions have not been sealed or closed. The report of the District Legal Services Authority was mentioned and the details of number of shops visited by the committee, the shops having licence, without licence and selling stamped meat or unstamped meat / chicken, have been given. The details of penalty imposed and the prosecution launched are also given.

4. It is in the above background of the facts, controversy and the issues, that the case and the prayers of the applicants in the Civil Applications will have to be addressed. Coming therefore, back to the grievance and prayers made in the Civil Applications, in support of the prayer to permit the applicants to open the seals of their meat shops, it is the case that the applicants have been in the business of poultry, chicken, meat since more than 35 years, that their shops are situated within the limits of the municipal corporation and that the applicants have been holding the licences issued by the Trade and Health Department, which are renewed from time to time by the competent authority of the Corporation.

4.1 The applicants of the other two Civil Applications No.12 of 2023 and No.13 of 2023 who are

the association of shop runners, gave details of the inspection carried out by the District Service Legal Authorities. They pleaded that if unstamped meat is sold at some shops, it is failure of the Stand and authorities of the State in discharging statutory duties of providing slaughter house. It was submitted that therefore, no fault could be found with the persons engaged in slaughtering the animals and selling meat. According to them, there is no proper mechanism to take care of the meats of the needs of the citizens and for running the business of meat selling.

4.2 In praying to permit the reopening of the meat shops and slaughter house associated with slaughtering of small animals such as poultry, goats and sheep, the applicants in the Civil Application have canvassed their fundamental right to freedom of trade. It is submitted that closure of meat shops was illegal and amounts to deprivation and curtailment of their right of free trade under Article 19(1)(g) of the Constitution. It is also submitted that month of Ramadan is underway, therefore, State should liberally act to redress the grievance of the applicants to permit them to sell the meat by allowing opening of the shops.

5. The meat shop owners have to fulfill the requirements of law and regulations in running their trade or business, in the following broadly

classified areas,

(a) Registration and licensing to the Food Business Operator to conduct the various kind of Food Business as contained in the Food Safety and Standard (Licensing and Registration of Food Businesses) Regulations, 2011.

(b) Requirement of the sale of stamped meat by the Food Business Operators in the retail meat shop as contained in the Clause 9.13 of the Hygiene and Sanitary Requirements prescribed under the Part 4-(b) of Schedule IV of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

(c) Maintenance of Hygiene and Sanitary conditions of Slaughter Houses, Meat Processing Units and Retail Meat Shop as stipulated under Part 4 of Schedule IV of the Food Safety and Standards (Licensing and Registration) Regulations, 2011.

(d) Maintenance of Hygiene and Sanitary conditions for food business kind of Fish & Fish Products as stipulated under Part I and Part II of Schedule IV of the Food Safety and Standards (Licensing and Registration) Regulations, 2011.

(e) Pollution and environmental norms and statutory prescriptions for prevention of

cruelty to animals in their treatment, transportation etc.

5.1 For looking into the grievance of the applicants who are meat vendors or the owners of the shop selling meat, the provisions of Food Safety & Standards Act, 2006, as well as Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 needs to be seen inasmuch as all these vendors engaged in the food business have to comply with the relevant provisions of Food Safety Act and the Regulations. The word "Food" defined in Section 2(j) of the Act would mean any substance, whether processed, partially processed or unprocessed, which is intended for human consumption. Food does not include any animal feed, live animals unless they are prepared or processed for placing in the market for human consumption.

5.1.1 Section 2(n) defines "food business", means any undertaking, whether for profit or not, carrying out the activities relating to manufacture, processing, packaging, storage, transportation or distribution of food. Section 2(o) defines "food business operator", means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, Rules and Regulations. There is also a concept of "food safety audit" defined in section 2(r) to mean a systematic and functionally independent examination of food

safety measures adopted by manufacturing units to determine whether such measures and related results meet with objectives of food safety.

5.1.2 When it comes to meat as one of the food under the Act, Regulation 2.5 of the Food Safety and Standards Regulations, 2011 deals with "Meat and Meat Products". The word "animal" is defined in Regulation 2.5.1 (a) to mean any of the species specified therein including poultry. 'Meat' is defined in Regulation 2.5.1 (c) as "all edible parts (including edible offal) of any food animal slaughtered in an abattoir that are intended for or have been judged as safe and suitable for, human consumption". Meat and food products are also defined in 2.5.1(f), means any product prepared from meat and other ingredients through various processing methods. "Slaughter" defined in 2.5.1(g) means killing of food animals for human consumption in authorised slaughter house. Slaughter house or abattoir is also defined in Regulation 2.5.1(h), which means licensed place or building or premises where food animals are slaughtered humanely in hygienic manner with proper ante-mortem and post-mortem inspection by veterinarian for human consumption.

5.1.3 The Regulations also provide for adhering to specific hygienic and sanitary practises to be followed by food business operators engaged in

manufacturing, processing, storing and selling of meat and meat products. The slaughter house is required to obtain No Objection Certificate from local authority before license could be granted to such slaughter house to operate. The manner of operation of the slaughter houses by ensuring the safeguards are detailed in the Regulations. They include general requirements, location of premises, requirements as to the premises, sanitary practises, the equipment machinery has to be kept, personal hygiene to be maintained and the provisions for animal welfare, transportation, etc. of the animals, precautions to be taken pre and post slaughter of the animals, etc.

5.2 The case sought to be advanced by the applicants is that they are small meat vendors who sell poultry meat and they are not slaughter houses *stricto sensu*. It was submitted that the definition of 'slaughter house' which means killing of food animals for human consumption, takes their small shops within sweep of the 'slaughter house' as the poultry is treated as animal used for human consumption. What is sought to be submitted was that the birds-the poultries and chicken may not be treated as 'animals'. 'Animal' as for the definition in section 2(a) includes any living creature. Learned senior advocate for the applicants submitted that exception may be made for them, as they are small livelihood earners.

5.2.1 The submission could not be countenanced since it is not for the court to rewrite the legislative definition and give effect to it accordingly.

5.2.2 The Supreme Court stated in **Mohmad Hanif Kureshi Vs. State of Bihar [(AIR 1958 SC 731)]**, stated that the legislature is the best judge of what is good for the community, by whose suffrage it comes into existence. It was observed,

“The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its law are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise the degrees of harm”

5.3 The shops of the applicants are closed as they have not been complying with the norms of applicable laws. The main Public Interest Petition is directed against very aspect of compliance of Foods Safety Standards Act, the Foods Safety Regulations, pollution laws as well as food and animal cruelty related laws. It was by interim order dated 18.10.2022 extensively referred to as above, that the Court asked the competent authorities to ensure the compliance of the laws. The larger number of closures were effected by the authority as the owners of the shops and premises were found to be non-compliant. This order dated 18.10.2022 is not

challenged. Yet the present Civil Applications are filed seeking the directions for reopening of the meat shops.

5.4 Permission to reopen the meat shops cannot be granted eventhough the shop owners remain non-compliant of the laws. While the indirect prayer before the Court is to relax the norms, such course is not possible in law. There is no challenge to any of the provisions of the Acts or Regulations. No order could be passed by the Court which may operate contrary to or may have the effect of disregarding the statutory prescriptions in respect of Food Safety and other regulatory norms required to be observed in larger public good.

5.5 In seeking prayers in the Civil Application for opening of meat shops and to do business of selling of the poultry meat etc., the fundamental right under Article 19(1)(f) of the Constitution has been pressed into service to freely engage in the trade freely. Any fundamental right is subjected to reasonable restrictions provided in Sub-article (2) to Sub-article (6). The limitations on the right when legitimately imposed for public good and in public interest or for any other valid considerations, are reasonable restrictions. In State of **Maharashtra Vs. Mumbai Upnagar, Gram Udhyod Sang, [(1969 (2) SCR 392)]**, one of the question was whether the obligation to not sell the carcass but to dispose it of as per

the provisions of the Bombay Municipal Corporations Act, infringe the fundamental rights of the respondents under Article 19(1)(f) of the Constitution.

5.5.1 The Supreme Court observed,

'...restriction upon the owner of the carcass involves also a restriction upon the right of the first respondent having regard to the character of the legislation and its avowed object, the restriction upon the first respondents right to carry on his occupation or business is a reasonable one within the meaning of Art. 19(5) and (6)'

5.6 The provisions of Food Safety and Standards Act, 2006 and the Food Safety Regulations as applicable to the meat business and meat shops, the regulatory and hygienic measures contemplated for the meat shops and slaughter houses in the said law and the rules, the other laws seeking to fulfill the purpose of insulating the animals from cruelty and cruel acts, pollution and environment laws required to be observed by the meat vendors, are all limiting factors, which will operate as reasonable restrictions on the right of the vendors of the meat and slaughter house owners to run their business. In their degree, they are restrictive measures, which really do not prohibit running the meat business or slaughter houses but requires the compliance of the norms.

5.6.1 Right to freedom of trade may be a fundamental right, but not a *carte blanche*. The above laws are enacted and operate in public good and public interest. The freedom to trade or right to do business have to yield the public health norms and the restrictive compulsions needed to be enforced in larger public good. The right to free trade in food items like meat, or any such food has to be subserving to public health and food safety requirements.

5.7 The applicants can also not be permitted to assert unrestricted freedom to do business in meat or to run slaughter houses on the ground of religious occasion, when they are otherwise non-compliant of the norms in law. The applicants cannot draw for them such unrestricted right to do the business on the canvass. A bare ground may not be permitted to be advanced to justify to seek laxity in the food safety or pollution norms. The activity of running unlicensed slaughter houses and selling unstamped meat could not be approved or permitted without the stakeholders complying the applicable laws.

5.8 Viewed from the another angle, for the consumers of any food including the meat and meat products, there is a right to have safe food. The right to food with hygiene is also concomitant to Article 21 of the Constitution, as the right to food itself is. This would represent the other side of

the coin when the meat vendors would insist for doing business even the meat is unstamped meat or that the slaughter house is not licensed or the norms-compliant. Article 21 would also envelope in it a right to safe food. Right to ensure such safe food is also an obligation on the State authorities, which they discharge by implementing and enforcing the food safety norms and other regulatory measures prescribed in the different statutes, as above.

5.8.1 The licensing of the meat shop or the slaughter house and ensuring the hygienic operation of such premises and places, go long way to food safety. In **Brihanmumbai Mahanagar Palika Vs. Willingdon Sports Club [(2013) 16 SCC 260]**, The Supreme Court was dealing with the issue whether the Sports Club providing catering services to the members and the guests was obliged to obtain the license under the provisions of the Bombay Municipal Corporations Act, 1888. It held that it was a catering establishment and was an eating house which required to obtain the license.

5.8.2 The Supreme Court noted that the World Health Organisation in its publication for **Safe Food And Better Health (2002 Edn.)** recognised that availability of safe food is a basic human right and it contributes to health and productivity. The Supreme Court explained the importance of licencing for ensuring food safety,

"Although licensing alone cannot be a foolproof mechanism for ensuring food safety but it is certainly one of the most effective methods of ensuring that quality food is prepared in most hygienic conditions and is made available to the consumers. The licensing system prevents the opening of establishments that pose a threat to the health of the people. The licensing mechanism also provides for penalties in case of non-compliance with licensing conditions, which could lead to cancelling or suspension of the licence. Such a fear created in the minds of the licensees also ensures that they comply with licensing conditions in order to continue enjoying the benefits of the licence. Thus, it can be said that a licensing system goes a long way in ensuring food safety thereby guaranteeing the supply of fresh and safe food and preventing the spread of foodborne diseases."

6. All the meat shops and slaughter houses which are closed by the authorities for the reason that they have failed to comply with the licencing and regulatory norms, food and safety standards, pollution control requirements and for any such other legal considerations including non-observance of hygiene imperatives, could hardly be permitted to be reopened on spacious grounds, unless they become fully compliant of such norms and regulations. Intervention is not called for by the court when it comes to abiding by the food safety etc. norms. It would be an overriding principle that the public concerns of hygiene and food safety will have to prevail.

6.1 The details and figures furnished by the State

Authorities in their affidavit-in-replies, which have been noted in above, do suggest that the authorities have acted pragmatic. All slaughter houses and meat shops are not ordered to be closed. Those who are norms compliant, are permitted to run their business. Even the shops and premises owners who are given the show cause notice or whose shops are ordered to be closed, could meet with the requirements of law and after fulfilling the norms, may approach the competent authority or competent committee seeking to reopen their business premises or shops. The State Slaughter Committee and District Level Committees are functional.

6.2 For all the forgoing reasons, except granting prayer in Civil Application No.11 of 2023, allowing the applicants thereof to join as parties in the main Writ Petition (PIL), no relief in rest of the Civil Applications could be granted.

6.3 It is however, observed that it will be open for any meat shop owner, meat vendor or slaughter house owner to approach the competent authority or competent committee by showing that it has ensured compliance of all the laws and regulations as may be applicable. In all such cases, it is provided, the competent authority or the State or District Level Committee as the case may be, shall permit the shop or slaughter house to be reopened, permitting the owner or vendor to run the business by continuing to

comply with the business norms.

6.4 It is also observed that if any such application is made by any shop owner or vendor, it shall be dealt with expeditiously without booking delay.

7. All the Civil Applications are disposed of accordingly.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

BIJOY B. PILLAI/MANSHI